Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-1821

In The
Supreme Court of the United States
October Term, 1986

STATE OF UTAH, DUCHESNE COUNTY, UTAH, UINTAH COUNTY, UTAH, ROOSEVELT CITY AND DUCHESNE CITY, UTAH,

Petitioners,

v.

UTE INDIAN TRIBE,

Respondent.

SUPPLEMENTAL BRIEF OF THE UTE INDIAN TRIBE

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I.

THE CONCLUSION OF THE UNITED STATES THAT THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED IS FULLY SUPPORTED BY THE RECORD.

The Ute Indian Tribe agrees with the United States that the petition for a writ of certiorari should be denied. Review by this Court is unnecessary because:

1. Virtually all of the Uintah Reservation national forest and the Uncompahgre Reservation are uninhabited lands, owned by the United States, except that a substantial portion of the Uncompahgre Reservation is made up of Hillcreek Extension Indian lands held in trust by the United States for the benefit of the Ute Indian Tribe. Nothing in the judgment of the court of appeals affects anyone's title.

2. Because the lands are uninhabited, the Ute Indian Tribe can exercise no governmental authority affecting non-Indians. As the United States demonstrates, and the petitioners concede, under this Court's precedents, the Tribe's civil jurisdiction can only be exercised after non-Indians have entered into "consensual relationships" with the Tribe or the Tribe makes an affirmative showing that certain non-Indians are engaging in conduct that "threatens" the economic security, or the health or welfare of, the Tribe. *Montana v. United States,* 450 U.S. 544, 565-566 (1981). Of course, as all parties acknowledge, the Tribe does not possess the power to impose criminal jurisdiction over non-Indians.

3. While the Ute Indian Tribe's civil jurisdiction powers could apply to non-Indians residing within the Uintah

Valley Indian Reservation and doing business with the Ute Indian Tribe, the State of Utah does not consider such a possibility to be troubling, because the State of Utah *declined* to appeal the district court decision upholding the boundaries of the Uintah Valley Reservation .

4. Indeed, the important jurisdictional result achieved by the Ute Indian Tribe in this litigation has very little to do with non-Indians. Rather, the court of appeals' decision permits the Tribe to regulate, in a civil and criminal fashion, tribal member conduct occurring within the Uintah Valley Reservation and the Uncompahgre Reservation. The Tribe will exercise criminal jurisdiction only over its members, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Tribe will be responsible for regulating tribal member activities, including hunting and fishing, *Montana v. United States, supra*, and tribal courts will be available to resolve tribal member disputes. *Williams v. Lee*, 358 U.S. 217 (1959).

The petition for a writ of certiorari should be denied because petitioners have failed to identify any issues of significant practical importance. Furthermore, no party has claimed, let alone demonstrated, that the court of appeals sitting *en banc* failed to consider and apply this Court's disestablishment precedents.

II.

THE TRIBE DISAGREES WITH THE SUGGESTION OF THE UNITED STATES THAT IN THE ALTERNATIVE THE STATUS OF THE UNCOMPAHGRE RESERVATION COULD BE RECONSIDERED BY THE COURT OF APPEALS.

While urging this Court to deny the petition for a writ of certiorari, the United States suggests in the alternative that because the United States had not set forth its views on the status of the Uncompahgre Reservation boundary before the court of appeals, this Court could now ask the court of appeals to reconsider that boundary. This novel suggestion should be rejected. The United States filed three briefs in the proceedings below—one before the district court and two before the court of appeals. If the United States withheld in these three briefs its views on the Uncompahgre Reservation, it did so voluntarily and knowingly. Moreover, the views of the United States relating to the status of the Uncompahgre Reservation first set forth in its memorandum to this Court in *Andrus v. Utah*, 446 U.S. 500 (1980) were well known both to the district court and to the court of appeals. Indeed, the district court in its analysis of the Uncompahgre Reservation, quoted virtually in its entirety the memorandum of the United States actually filed in *Andrus v. Utah, supra.* (Pet. App. 185a n.113).

Hence, reconsideration is not appropriate. The court of appeals knew the views of the United States set out in the district court opinion, considered the governing precedents of this Court, including the most recent decision of *Solem v. Bartlett*, 465 U.S. 463 (1984), and sitting *en banc*

concluded that the relevant acts and legislative history fail to reveal "substantial and compelling evidence of a congressional intention" to diminish the Uncompahgre Reservation boundary. *Id.* at 472.

CONCLUSION

As urged by the United States, the petition for a writ of certiorari should be denied. The State of Utah and its subdivisions have failed to bring to the Court any concrete evidence showing that the court of appeals' decision is incorrect or that the court of appeals' judgment has any negative practical impact upon the Indian and non-Indian residents of northeast Utah.

Respectfully submitted,

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